

THE LEGISLATIVE ASSEMBLY OF
BRITISH COLUMBIA

MEMBERS' CONFLICT OF INTEREST ACT

SELECT STANDING COMMITTEE ON
PARLIAMENTARY REFORM, ETHICAL CONDUCT,
STANDING ORDERS AND PRIVATE BILLS
FIRST REPORT



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BRITISH COLUMBIA

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Parliamentary Reform, Ethical Conduct, Standing Orders
and Private Bills**

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Parliament Buildings
Victoria, British Columbia

December 6, 1999

To the Honourable,
The Legislative Assembly
Province of British Columbia,
Victoria, British Columbia

Honourable Members:

We have the honour to present the Report of the Select Standing
Committee on Parliamentary Reform, Ethical Conduct, Standing Orders
and Private Bills for the Third Session of the Thirty-sixth Parliament.

Respectfully submitted on behalf of the Committee,

Tim Stevenson, MLA
Chair

Paul Nettleton, MLA
Deputy Chair

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Composition of the Committee

(at December 6, 1999)

Members

Tim Stevenson, MLA	Chair	<i>Vancouver-Burrard</i>
Paul Nettleton, MLA	Deputy Chair	<i>Prince George-Omineca</i>
Graeme Bowbrick, MLA		<i>New Westminster</i>
Hon. Jim Doyle, MLA		<i>Columbia River-Revelstoke</i>
Hon. Helmut Giesbrecht, MLA		<i>Skeena</i>
Evelyn Gillespie, MLA		<i>Comox Valley</i>
Fred Randall, MLA		<i>Burnaby-Edmonds</i>
Hon. Joan Sawicki, MLA		<i>Burnaby-Willingdon</i>
Gary Farrell-Collins, MLA		<i>Vancouver-Little Mountain</i>
Geoff Plant, MLA		<i>Richmond Steveston</i>
Katherine Whittred, MLA		<i>North Vancouver-Lonsdale</i>
Jack Weisgerber, MLA		<i>Peace River South</i>

Clerk to the Committee

Craig James
Clerk of Committees and Clerk Assistant

Researcher to the Committee

Wynne MacAlpine
Committee Researcher



Terms of Reference

July 22, 1998

That this House authorize the Select Standing Committee on Parliamentary Reform, Ethical Conduct, Standing Orders and Private Bills be authorized [*sic*] to examine, inquire into and make recommendations on the matter of the *Members' Conflict of Interest Act (RSBC 1996 c.287)*.

In addition to the powers previously conferred upon the said Committee by the House, the Committee be empowered:

- (a) to appoint of their number, one or more subcommittees and to refer to such subcommittees any of the matters referred to the Committee;
- (b) to sit during a period in which the House is adjourned, during the recess after prorogation until the next following Session and during any sitting of the House;
- (c) to adjourn from place to place as may be convenient; and
- (d) to retain such personnel as required to assist the Committee;

and shall report to the House as soon as possible, or following any adjournment, or at the next following Session, as the case may be; to deposit the original of its reports with the Clerk of the Legislative Assembly during a period of adjournment and upon resumption of the sittings of the House, the Chair shall present all reports to the Legislative Assembly

Précis of the Committee's Work

The Committee began its work in the 1st Session of the 36th Parliament with the appointment of a new conflict-of-interest commissioner. The Committee's recommendation was released in the July 30, 1997 *Report of the Select Standing Committee on Parliamentary Reform, Ethical Conduct, Standing Orders & Private Bills*.

The second matter referred to the Committee was a review of the *Members' Conflict of Interest Act*. This review began in October 1997 and continued through to 1999. By agreement, the majority of the work was conducted by a subcommittee, though all members were invited to attend scheduled meetings.

The Committee consulted with the public as well as with selected individuals. The Committee began its public consultation process by placing advertisements in newspapers across the province, inviting comment on the issue of conflict of interest in public life. Ads were placed on two occasions in all daily provincial newspapers, as well as a large selection of weekly papers and three ethnic publications. The Committee established December 15, 1997 as the initial deadline for receiving submissions, but extended it until January 1998 because of a postal strike. The Committee received 34 written submissions from the public. This number included a written submission from Dulcie McCallum, former ombudsman for the Province of British Columbia.

The Committee also heard comments on the issue of conflict of interest in the public sector from the following witnesses:

- Gregory Levine, General Counsel, office of the ombudsman
- H.A.D. Oliver, members' conflict-of-interest commissioner
- John Mochrie, Chair, Public Service Employee Relations Commission (PSERC)
- John Ranta et al, Union of B.C. Municipalities (UBCM)
- Ted Hughes, former members' conflict-of-interest commissioner

Regulation of Conflict of Interest in British Columbia

The common law, the federal *Criminal Code* and the provincial *Constitution Act*, *Members' Conflict of Interest Act*, *Financial Disclosure Act*, *Municipal Act*, and *School Act* regulate the conduct of public officials to varying degrees and at various levels in British Columbia.

The strength of the prohibitions imposed upon various office holders can be compared by evaluating the applicable legislated conflict-of-interest provisions, such as:

- the definition of conflict of interest
- control and monitoring, including:
 - financial disclosure, and
 - withdrawal or recusal from proceedings
- legislative prohibitions
- supervision by an independent authority

Provincial Government

The *Constitution Act* and the *Members' Conflict of Interest Act* are British Columbia statutes governing conflict of interest at the provincial level. Provincial conflict-of-interest legislation applies to MLAs, including cabinet ministers and parliamentary secretaries, but not public servants. The federal *Criminal Code* governs some extreme instances of conflict of interest.

The *Members' Conflict of Interest Act* provides the following definition of conflict of interest:

For the purposes of this Act, a member has a conflict of interest when the member exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that in the performance of the duty or function or in the exercise of the power there is the opportunity to further his or her private interest [Section 2(1)].

The *Members' Conflict of Interest Act* encompasses both actual and apparent conflict of interest, thereby embracing a wide range of conduct relating to the integrity of Members of the Legislative Assembly. "Apparent" conflict is defined in section 2(2) as follows:

For the purposes of this Act, a member has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest.

In terms of controlling and monitoring potential conflict-of-interest situations, the *Members' Conflict of Interest Act* provides for both withdrawal or recusal from proceedings, and disclosure. It states that during a proceeding, any member who has reasonable grounds to believe that he or she has a conflict of interest must disclose the general nature of the conflict of interest, and withdraw from the meeting without voting or participating in the consideration of the matter.

The *Members' Conflict of Interest Act* also requires, in section 16, annual disclosure statements, containing "the nature of the assets, liabilities and financial interests of the member, the member's spouse and minor children, and private corporations controlled by any of them." "Spouse" is defined as the person married to the member, or living with the member as his or her wife or husband.

The conflict-of-interest commissioner is required to file the public disclosure statement with the Clerk of the Legislative Assembly, who must make the statement available to any person and provide a copy of the statement upon request.

The *Members' Conflict of Interest Act* also expressly prohibits members from exercising any official power, duty or function that may give rise to a perceived conflict of interest. Members may not:

- use insider information to their benefit;
- use the influence of their office to obtain a decision to further their private interests; or
- accept fees, gifts or personal benefits in return for activities directly or indirectly concerned with the performance of their official duties, other than those normally received as required by protocol or social obligation [Sections 4 to 9].

In addition, members of the executive council (the cabinet) must not:

- engage in employment or in the practice of a profession;
- carry on a business; or
- hold an office or directorship other than in a social club, religious organization or political party if any of these activities are likely to conflict with the member's public duties [Section 9(1)].

And a former member of the executive council or former parliamentary secretary must not, for 2 years after ceasing to hold office:

- accept a contract or benefit that is awarded, approved or granted by the executive council, a member of the executive council or an employee of a ministry other than an employee of an agency, board or commission;
- make representations on his or her own behalf with respect to such a contract or benefit; or
- make representations on another person's behalf with respect to such a contract or benefit [Section 8(4)].

Section 8(1) of the *Members' Conflict of Interest Act* further restricts the official activities of those members by prohibiting ministry employees from knowingly awarding contracts or granting benefits to former members of the executive council or former parliamentary secretaries, or persons for whom the former executive council member or parliamentary secretary has made representations.

Supervision by an independent officer is another means of gauging the efficacy of conflict-of-interest regulation. The provision of an independent authority with the power to give advice, hold inquiries, and recommend the imposition of sanctions is an important mechanism for ensuring compliance with legislated rules of conduct. Such an authority can enhance compliance using his or her powers of education and judgment.

The *Members' Conflict of Interest Act* provides, in section 14, for the appointment of a conflict-of-interest commissioner as an officer of the Legislature. The commissioner is required to report annually to the Legislative Assembly and to obtain confidential member disclosures and prepare public disclosure statements. The commissioner may also give opinions or make recommendations in response to members' questions about their obligations under the Act. He or she may undertake inquiries in response to complaints — from a member, a member of the public or the Legislative Assembly — that a member has contravened the *Members' Conflict of Interest Act* or section 25 of the *Constitution Act*.

Section 25 of the *Constitution Act* reads that a member of the Legislative Assembly must not accept from the government:

- money for the supply to the government of any goods, service or work; or
- money from an office or employment to which the government has appointed the member;

and that they must not be, in respect of a corporation that supplies the government any goods, service or work or in respect of that corporation's affiliate:

- a director or senior officer as defined in the *Company Act*; or
- a person to whom, as a shareholder, section 5 (1) of the *Financial Disclosure Act* would apply, if that section applied to the member.

Upon the request of the executive council, the commissioner may also inquire into a cabinet minister's or parliamentary secretary's compliance with the provisions of the Act or section 25 of the *Constitution Act*.

As a result of the findings of any inquiry, the commissioner may recommend to the Legislative Assembly that the member be reprimanded, suspended for a specific period, fined, or obliged to give up his or her seat. The Legislative Assembly may accept or reject the commissioner's recommendation, but "shall not further inquire into the contravention" or impose a punishment other than that recommended by the commissioner.

Local government

Conflict of interest is currently regulated at the municipal level by common law, the *Municipal Act*, and the *Financial Disclosure Act*.

Neither the *Municipal Act* nor the *Financial Disclosure Act* contains a definition of conflict of interest.

Under sections 2 through 5 of the *Financial Disclosure Act*, municipal officials and municipal employees are required to file written disclosure statements with disclosure clerks, and section 6 states that these statements are to be publicly available. Section 8 indicates that failure to comply does not invalidate any matter, proceeding or contract, although section 9 states that failure to comply is an offence. With permission of the Attorney General, the courts may adjudicate an offence under the Act.

The *Municipal Act* requires withdrawal or recusal from proceedings as a means of monitoring and controlling conflict of interest. If a councilor believes that he or she is not entitled to participate in a discussion or vote on a question due to a conflict of interest, he or she must declare so and:

- must not take part in the discussion of the matter and is not entitled to vote on any question in respect of the matter,
- must immediately leave the meeting or that part of the meeting during which the matter is under consideration, and
- must not attempt in any way, whether before, during or after the meeting, to influence the voting on any question in respect of the matter [Section 201].

In addition, a council member "must not participate in the discussion of or vote on a question in respect of a matter in which the member has a direct or indirect pecuniary interest."

The *Municipal Act* does not contain a comprehensive list of prohibited conduct. A former ombudsman submitted to the Committee that, through section 205, it is presumably within the procedural power of councilors to regulate the conduct of their peers with respect to their disposition on council and in respect to issues such as misuse of office. However, there is no legislated requirement for councilors to regulate the conduct of their peers.

Nor does the *Municipal Act* provide for oversight by an independent officer. Former ombudsman Dulcie McCallum told the Committee that the provincial ombudsman has jurisdiction over a council — that is, councilors in quorum — but not over councilors *per se*, because they are not authorities within the Schedule of the *Ombudsman Act*. In other words, the ombudsman has some jurisdiction in regulating conflicts of interest for local governments acting in their administrative, but not legislative, capacities. Oversight of municipal council or board members' behaviour is largely left to the courts upon the action of at least four electors [Section 183].

Public Service

Minimal legislative restrictions regarding conflict of interest apply to public servants, who are largely regulated in this area by administrative policy. In June 1997, the office of the auditor general released a report on its review of ethics codes in the public sector, which produced several findings. The review found that there are general standards of conduct that apply to all employees of government ministries, that all 20 Crown corporations and provincial agencies

have codes governing the conduct of their employees, and that 10 Crowns have codes that apply to directors. Monitoring for compliance with these codes is generally through informal self-assessment, and public reporting about the impact of the codes is rare.

Public employees designated by order-in-council are required, like municipal employees, to file written disclosure statements with disclosure clerks under the *Financial Disclosure Act*.

The Committee heard, from John Mochrie, Chair of the Public Service Employee Relations Commission (PSERC), that PSERC's "Standards of Conduct for Public Service Employees" provide employees with guidelines on loyalty, confidentiality, public comments by public servants, political activity, service to the public, workplace behaviour, harassment, the *B.C. Human Rights Code*, and many more issues. The standards provide this definition of conflict of interest:

A conflict of interest occurs when an employee's private affairs or financial interests are in conflict, or could result in a perception of a conflict, with the employee's duties or responsibilities in such a way that: the employee's ability to act in the public interest could be impaired; or the employee's actions or conduct could undermine or compromise the public's confidence in the employee's ability.

The standards also provide guidelines on allegations of wrongdoing and the process employees must follow for reporting. Enforcement is through regular employer tools under the BCGEU collective agreement, including the full range of disciplinary actions.

The guidelines apply to all public servants, up to and including deputy ministers, order-in-council employees and ministers' political staff. Disciplinary measures for these employees rest with the Commissioner of the Public Service, whose decisions are binding on government. An employee may challenge in court an action taken by the government at the commissioner's recommendation, if he or she chooses.

Issues Canvassed by the Committee

Committee members identified several issues for the Committee to address during the course of its review. These included:

Ethical conduct

Should the Act be expanded to include types of conduct beyond conflict of interest, such as ethics, honesty and integrity?

Outside employment

Currently the Act prohibits outside employment for members of the executive council if it is "likely to conflict with the member's public duties." Should this prohibition be extended to all Members of the House?

Definition of "spouse"

Should the Act be amended to include same-sex relationships under this definition?

Parliamentary secretaries

For a 24-month period after leaving office, cabinet ministers and parliamentary secretaries are restricted from lobbying or receiving government contracts. Should the rules be the same for both parliamentary secretaries and cabinet ministers, or should a distinction be made between the two?

Definition of "private interest"

Should there be a positive definition of private interest, rather than the current negative definition, which lists only what a member may not do?

The Constitution Act

Should the Committee recommend adopting recommendation #2 of the conflict of interest commissioner's 1992/93 Annual Report to transfer sections 25 through 27 of the *Constitution Act* into the *Members' Conflict of Interest Act*?

Automatic review process

Should there be a section that requires a regular review of the Act?

Other public servants

Should all or portions of the Act be extended to cover civil servants, heads of provincial agencies, municipal officials, and/or directors of non-profit societies?

Office, powers and compensation of the Conflict-of-Interest Commissioner:

How would any changes to the Act as outlined above require changing the structure of the office of the conflict-of-interest commissioner?

Currently the Act requires a two-thirds majority vote in the House on recommendation of the Premier to appoint a conflict-of-interest commissioner. Should this provision be changed to conform to the appointment procedures of other statutory officers; e.g. unanimous recommendation of a special committee ratified in the House by a straight majority vote?

Currently the Commissioner is appointed for five years, and may be re-appointed. Should the term of office be longer? Should the re-appointment clause be removed?

The Act allows the Lieutenant-Governor-in-Council to determine the commissioner's compensation level, which is currently set at one-half that of other provincial statutory officers, reflecting the half-time nature of the appointment. Should the compensation level be specifically included in the Act, to conform to other statutory officers?

Also, the Act is silent respecting the commissioner's eligibility for pension, and how this is to be calculated. Should these provisions be included in the Act, as they are with other statutory officers?

Should the Committee accept recommendation #6 of the conflict-of-interest commissioner's 1992/93 Annual Report, which would enable the commissioner to dispose of documents relating to members after a specified period of time?



Witnesses' Remarks

Four themes emerged from the submissions made to the Committee. Some witnesses expressed the view that the Act as it currently stands is effective in preventing conflicts of interest among elected officials. They claim that the Act provides principled guidelines, that most politicians act with integrity, and that any conflicts that do occur are due to the shortcomings of the individual concerned, not the result of flaws in the legislation.

Some witnesses voiced the opinion that conflicts of interest are rife among elected officials, and that even legislation like the *Members' Conflict of Interest Act* cannot make politicians accountable to the public. Some of these witnesses also believe that members of the Select Standing Committee on Parliamentary Reform, Ethical Conduct, Standing Orders & Private Bills, being MLAs, are in conflict in their attempt to review the Act.

Those provincial officials who spoke to the Committee made some comments on possible amendments to the *Members' Conflict of Interest Act*, including the addition of a general integrity clause.

Two issues that recurred persistently in witnesses' submissions to the Committee were the application of the *Members' Conflict of Interest Act* to elected municipal officials and senior public sector officials.

Provincial government

Witnesses recommended changes to the monitoring and control provisions of disclosure and withdrawal or recusal from proceedings.

It was suggested that the Act's spousal disclosure requirement may be a violation of privacy, and may also be ineffective, since it might not necessarily capture a member's significant financial relationships. It was proposed that this provision be repealed from the *Members' Conflict of Interest Act*.

Concerning the requirement for withdrawal or recusal from proceedings, it was submitted that the *Municipal Act*, in section 201(3)(c), is more precise than the *Members' Conflict of Interest Act*. Therefore, it was suggested that the Committee consider recommending that the *Members' Conflict of Interest Act* be amended to follow the example of the *Municipal Act* in this area.

It was also recommended that the Committee examine the range of legislative prohibitions outlined in both the *Criminal Code* and the *Members' Conflict of Interest Act* with a view to incorporating conflict areas that currently remain outside the purview of either piece of legislation.

Other recommendations:

- The conflict-of-interest commissioner should not be subject to reappointment.
- The conflict-of-interest commissioner should be appointed for a five- or six-year term, or a five-year term with the possibility of a one-year extension.
- There is no reason for outside employment to be prohibited for members in general. Since MLAs are not paid liberally, they should be entitled to maintain outside work.
- Provincial legislation should be consistent on the rights of same-sex spouses.
- To enhance the disclosure provisions of the Act, same-sex spouses should also be in the Act's definition of spouse.
- The conflict-of-interest commissioner should have the authority to dispose of documents after five years. This would save on the cost of storage space.
- The current definition of "private interest", which has been interpreted as not limited to financial interest, is satisfactory and should be retained.
- Sections 25 and 27 of the *Constitution Act* should be incorporated into the *Members' Conflict of Interest Act*, or added to a schedule of the *Members' Conflict of Interest Act*. This would assist in clarifying the references between the two acts.
- The current requirement for a two-thirds majority vote in the House for the selection of a commissioner is satisfactory. Because the selection of the conflict-of-interest commissioner is more politically sensitive than the selection of other officers of the Legislature, a two-thirds majority vote is appropriate.

General integrity clause

The Hon. Ted Hughes stated that his primary purpose for addressing the Committee was to promote the inclusion of an honesty and integrity clause.

He suggested that the clause be modeled after the federal clause, which reads:

Public officeholders shall act with honesty and uphold the highest ethical standards so that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced.

Mr. Hughes noted that other jurisdictions have adopted similar honesty and integrity provisions.

Mr. Hughes' explanation for recommending this type of clause is that it would restore public confidence in political officeholders and reduce public cynicism and suspicion of political processes. In turn, this would attract persons of honesty and integrity to public service. He claims it would also improve political officers' awareness of and compliance with the standards of conduct expected of them.

Mr. Hughes noted that there is a whole range of unethical conduct that is not encompassed under the rubric of conflict of interest or criminality and which is not regulated by any official prohibition or sanction.

In response to members' concerns, Mr. Hughes explained that any conflict-of-interest commissioner would be reasonable enough to dismiss frivolous and vexatious complaints made to him or her about political officers' conduct that do not fall within the confines of the statute, and that any conflict-of-interest commissioner would also be reasonable enough to interpret the term "integrity" consistently with the social climate. Mr. Hughes also explained that including an honesty and integrity clause in the preamble to the act would be better than including no reference to honesty and integrity, since it would influence the symbolic value of the statute and assist in its interpretation. However, he noted that the Act would also require an amendment enabling the conflict-of-interest commissioner to provide an opinion on the interpretation of the clause. Mr. Hughes stated that he would prefer the honesty and integrity clause to be included as a section in the statute

The conflict-of-interest commissioner, H.A.D. Oliver, also recommended broadening the scope of the Act to express the principle of ethical conduct. He noted that this "would require members to act with honesty and uphold the highest ethical standards so that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced." Such a

measure would enable the Commissioner to comment on activities that are not clearly conflicts-of-interest or apparent conflicts-of-interest, but are nonetheless unethical.

A statement regarding ethical conduct could be incorporated into the Act as part of its preamble, as with Ontario's *Members' Integrity Act*, and strengthened further by a section similar to section 30 of the *Members' Integrity Act*:

The Executive Council may request that the commissioner give an opinion as to whether a member of the Executive Council has contravened this act or Ontario parliamentary convention.

These provisions enable Ontario's conflict-of-interest commissioner to report if a member has breached the conventions of the House, as represented in the preamble to the Act. The House is then free to consider the commissioner's comments on the matter. Mr. Oliver comments that the inclusion of ethical conduct in the *Members' Conflict of Interest Act* would be well accepted by the electorate, and would serve to remind members of their duties with respect to ethical conduct.

For clarification, a section similar to the *Members' Integrity Act*, section 5, would help to explain the application of "ethical conduct" for members:

This act does not prohibit the activities in which members of the assembly normally engage on behalf of constituents, in accordance with Ontario's parliamentary convention.

Also, including general integrity provisions in the Act would require renaming the Act to reflect its enlarged scope.

Local government

Many witnesses, including the former ombudsman, the Legal Counsel to the office of the ombudsman, representatives of the Union of B.C. Municipalities (UBCM), and the conflict-of-interest commissioner, recommended extending the scope of the *Members' Conflict of Interest Act* to municipal government and regional district officials.

Some witnesses suggested that the *Municipal Act* is powerless to manage conflicts of interest in that it cannot enforce disclosure rules or require councilors to abstain from proceedings that may involve them in a conflict of interest. Some wrote that the *Municipal Act* is inadequate because it doesn't require council

decisions to reflect public opinion as expressed during public hearings into rezoning applications.

Some witnesses were particularly concerned that allowing realtors to hold municipal office fosters conflicts of interest, since local government deals frequently with zoning by-laws and real estate transactions. One witness recommended that the Act prohibit realtors and developers from sitting on municipal councils, much like the *Public School Act* prohibits locally employed teachers from holding school trusteeships, or that the Act require realtors to give up their professional licenses while holding office.

While the *Financial Disclosure Act* could be used as a monitoring tool at the municipal level, it is not linked to conflict of interest in legislation. It has been argued that in practice, the public does not access these statements often enough to effectively monitor disclosure. There is also no supervision of the disclosure by an independent official as there is with the *Members' Conflict of Interest Act*, but only supervision of the filing *per se*. One witness declared that "the lack of an advisory system at the municipal level as well as throughout the civil and civic services is unfortunate." It was recommended that financial disclosure for municipal officials should be contained in a comprehensive conflict-of-interest act or the *Municipal Act*.

It was also suggested that an independent ethics commissioner, either the current office of the conflict-of-interest commissioner or a separate commission, should be made available to local government officials. This would simplify the process for citizens, provide a source of guidance for both citizens and councilors on issues of conflict of interest, and clarify the role of the ombudsman in adjudicating municipal conflicts of interest. The municipal ethics commissioner should properly report to the council in question first, and then, if the council fails to remedy the conflict of interest, to the Attorney General in his or her capacity as a public prosecutor or to the Legislature,

The UBCM argued that the conflict-of-interest office might not be able to competently adjudicate local government conflict-of-interest issues without taking on additional staff that specialize in local government. The UBCM prefers the present situation, where a member seeking guidance on conflict of interest can request advice from the municipality's lawyer, who is knowledgeable about local circumstances. Municipal councils often need advice on conflict of interest quickly, so that business can proceed. The UBCM questioned whether the conflict-of-interest commissioner could provide councils with timely advice.

The *Municipal Act* deals with direct and indirect pecuniary interest, but it does not regulate private interests or apparent conflicts of interest. The general counsel to the office of the ombudsman, Gregory Levine, submitted that indirect pecuniary interest in the *Municipal Act* should be clarified and made consistent with the guidance that has accumulated in common law and in the interpretation of the *School Act*. However, it would be preferable for the *Municipal Act* to adopt responsibility for the more comprehensive and higher standard represented by "private interests".

Conversely, the UBCM remarked that because the local government context is very different than the provincial government context, the regulation of pecuniary interest is more appropriate at the municipal level than personal interest.

Public service

A number of witnesses recommended that the scope of the *Members' Conflict of Interest Act* be extended to apply to senior public service employees and the employees of Crown corporations, provincial agencies, quasi-judicial advisory or regulatory bodies, school boards, band councils, and registered societies.

It was suggested that government appointees to advisory or regulatory bodies — who are paid with public funds and serve the public interest — should be bound by the same conflict-of-interest rules as elected officials.

Others wrote that because government grants self-regulatory authority to the professions, government should also provide these authorities with access to an independent conflict-of-interest process.

Other witnesses testified that litigation is currently the only means First Nations individuals have for holding their band councils accountable for their decisions and expenditures. They suggested that a formal conflict-of-interest process would encourage band councils to provide greater accountability to their memberships.

A number of witnesses noted that applying conflict-of-interest legislation to senior public servants, such as deputy ministers and heads of Crown corporations, would require a move from political accountability, which is currently a central constitutional principle in the B.C. political system, to "customer" accountability. The latter refers to the view that public servants are ultimately responsible for their decisions and should therefore be directly accountable to citizens and residents. In the present situation of political accountability, also called

ministerial responsibility, cabinet ministers are responsible and accountable to the public for the actions of public service in their respective ministries. Determining whether political or "customer" accountability is most appropriate would require considering the degree to which senior public servants act independently of government in carrying out the duties of their offices.

The conflict-of interest commissioner, H.A.D. Oliver, believes that the Act as currently written can competently deal with cases of conflict of interest at the senior government level on a case-by-case basis through section 20.

Mr. Oliver also expressed the view that conflict-of-interest legislation should continue to apply to senior civil servants and officials of Crown corporations. He recommended that supervision and guidance on conflict-of-interest issues should rest with the cabinet secretary in the case of senior civil servants, and with in-house, designated officers in the cases of Crown corporations. Should a conflict-of-interest situation proceed to the inquiry stage, however, the conflict-of-interest commissioner should be called upon to adjudicate. He disagreed, however, with the suggestion that the *Members' Conflict of Interest Act* should apply to organizations governed by the *Societies Act*.

The former ombudsman recommended that a statutory code of conduct for civil servants be added to the *Public Service Act* and a code for civic servants be added to the *Municipal Act*. Mr. Hughes argued that these senior officials are frequently confronted with ethical dilemmas and potential conflict-of-interest situations because they are privy to confidential information and may potentially exert influence over policy decisions and legislative initiatives. In this sense, these particular officials are more in need of conflict-of-interest guidelines than regular public service staff.

Another witness claimed that, in his experience with the federal public service, most conflicts of interest arose from officials' ignorance of how the public perceives conflict of interest. Therefore, he recommended that the Act require both senior and junior public service staff to obtain education in the Act's provisions.

Finally, John Mochrie, chair of the Public Service Employee Relations Commission, noted that the auditor general's review of public service standards of conduct found only two areas incomplete: disclosure and post-employment restrictions. Mr. Mochrie stated that, in his view, post-employment guidelines for senior public servants and certain other employees should be added to the "Standards of Conduct of Public Service Employees," but not in the form of legislated restrictions. Mr. Mochrie also suggested that any disclosure

requirements beyond those already contained in the "Standards of Conduct for public Service Employees" are unnecessary for public servants. The guidelines require a senior public servant to disclose his or her financial statements to his or her department or deputy minister, or, in the case of a deputy minister, to the Premier. Mr. Mochrie believes the current system is adequate and does not interfere with the principle of ministerial responsibility by transferring more accountability onto non-political public servants.

Other recommendations

- The provincial government should provide a statement of ethical values, an ethics framework, training and updated programs for the public service.
- Each public sector organization should have a value statement and code of ethics applicable to all employees and board members. This recommendation arose out of the auditor general's perception that many ethics codes do not flow from clear value statements.
- Each organization should have a designated ethics officer responsible for interpreting ethics codes and giving advice in specific situations.
- Post-employment activities should be restricted for key public servants.
- Public servants' ethics codes should be subject to a reporting mechanism. Currently, only B.C. Rail publicizes its code of ethics in its annual report.
- The director and officer provisions of the *Company Act* should be used as the minimum standard governing the directors of Crown corporations and provincial government agencies.
- A method of following up on compliance should be developed. The auditor general found that there were no deliberate attempts to ensure, through disclosure or any other means, that public service ethics codes are in fact being observed.

The Committee's Recommendations Concerning the *Members' Conflict of Interest Act*

Definition of spouse

The Committee recommends that the *Members' Conflict of Interest Act* be amended to include same-sex partners in its definition of spouse.

Parliamentary secretaries

The Committee recommends removing the 24-month restriction on post-employment activities for parliamentary secretaries.

The *Members' Conflict of Interest Act* restricts parliamentary secretaries from lobbying or receiving government contracts for 24 months after leaving office. This restriction is the same as the post-employment restriction for cabinet ministers. The Committee considered the responsibilities of parliamentary secretaries, and determined that their level of responsibility is less than for cabinet ministers. It was suggested that this recommendation initially arose from the perception that provincial parliamentary secretaries do the same job as federal parliamentary secretaries. The Committee agreed that provincial parliamentary secretaries have less responsibility than those at the federal level, and that as such, the 24-month post-employment restriction should not apply to them.

Constitution Act

The Committee recommends that sections 25 through 27 of the *Constitution Act* be incorporated into the *Members' Conflict of Interest Act*.

Sections 25 to 27 of the *Constitution Act*, which proscribe members' remuneration from government for the provision of goods, services and work and lists exceptions and the procedure for applying the prohibition, applied to members prior to the adoption of the *Members' Conflict of Interest Act*. Committee members agreed that such an amendment would serve to consolidate the conflict-of-interest provisions applicable to Members of the Legislative Assembly.

Automatic Review

The Committee recommends that the *Member's Conflict of Interest Act* be amended to include a provision for a mandatory review every 5 to 6 years.

A review conducted with a public hearing process would require MLAs to ascertain public perception of the Act and to evaluate the degree to which the Act is working to monitor and enforce MLAs' compliance with its provisions.

General integrity clause

The Committee recommends that the *Members' Conflict of Interest Act* not be amended to include a general integrity clause.

This recommendation generated much discussion among committee members. It was noted that there are two ways of amending the Act to include such a clause: either include a general integrity clause as a section of the Act, with a substantive requirement for ethical behaviour, or include a general integrity clause in the preamble to the legislation in order that ethical behaviour, including honesty and integrity, are understood as guiding principles in interpreting the statute.

It was considered that a general integrity clause would allow the commissioner to adjudicate instances of grossly unethical behaviour that are not necessarily conflicts of interest.

Some members expressed their concern that the addition of either type of integrity provision would give rise to frivolous or politically motivated complaints against members, thereby unnecessarily burdening the commissioner with insignificant inquiries and congesting the political process.

Other members suggested that including a general integrity clause, at least in the preamble to the Act, would satisfy the public that Members of the Legislative Assembly are required to act with integrity. This was considered especially important in view of the public's lack of confidence in elected officials' integrity, as evidenced by some submissions to the Committee. However, it was also argued that Members of the Legislative Assembly are assumed to behave ethically and that such a clause would imply that members are not obliged to act with integrity in the absence of legislative requirement.

Geoff Plant, MLA, provided the following considered opinion for not amending the Act to include a general integrity clause:

"It is the view of the Committee that, as a general rule, legislation which purports to regulate or prohibit certain types of conduct must be sufficiently clear

so as to permit those who are being regulated to know with certainty what they are and are not allowed to do. The incorporation of a general integrity clause into the Members' Conflict of Interest Act would not satisfy this basic requirement of good legislation. While there is undoubtedly broad agreement about the core elements of ethical behavior, there is often vigorous disagreement about the application of principles of ethics to particular cases. Such disagreements are perfectly appropriate in the political realm. But it is unwise to create legally enforceable sanctions for behaviour the propriety of which is a matter of disagreement.

"Legislating a broadly-worded requirement to act with integrity would create more, rather than less, certainty about what conduct is or is not permitted. For this reason, a general integrity clause would likely not enhance either the actual integrity of members or the public's perceptions of integrity. A commissioner given the power to sanction members who, in his or her view, have simply acted "unethically" would, eventually, become little more than an unprincipled arbiter of good legislative conduct.

"Principles of ethics and integrity are the foundation of the Act as it is currently written. The specific conduct which is now prohibited under the Act is conduct which all agree is unethical. If, as and when there is broad consensus that other types of conduct by members is unethical and ought to be made unlawful, then the legislature should intervene and introduce new rules to regulate or prohibit that specific conduct. No such proposals were brought to the attention of the committee."

Outside employment

The Committee recommends that the Act retain the differential provisions on outside employment for MLAs and cabinet ministers.

It was agreed that given the difference in pay and responsibilities between cabinet ministers and backbench members, backbench members should be allowed to pursue outside employment.

Municipal government, senior public servants and Crown corporations

The Committee recommends that the *Members' Conflict of Interest Act* continue to apply only to Members of the Legislative Assembly.

In recognition of the importance of witnesses' submissions on the question of applying similar principles to municipal government, senior civil servants and Crown corporations, the Committee suggests that these matters be referred to another committee for examination. Members noted that submissions made to the Committee on this matter would be of interest to any future committee considering conflict-of-interest regulations for those organizations.

It was generally agreed that organizations under the *Society Act* should not be subject to conflict-of-interest regulations.

Office of the conflict-of-interest commissioner

The Committee recommends that the office of the conflict-of-interest commissioner be provided with enough resources to do its work adequately and promptly.

Appointment of the conflict-of-interest commissioner

The Committee recommends that the appointment of a conflict-of-interest commissioner require the unanimous recommendation of the Special Committee to Appoint a Conflict-of-Interest Commissioner, followed by the existing requirement of ratification by two-thirds of the Legislative Assembly.

This recommendation is intended to make the *Members' Conflict of Interest Act* consistent with the statutes governing other officers of the Legislature, whose appointment provisions are very effective. Other officers of the Legislature are recommended to the Legislature by the unanimous decision of a special committee, rather than a majority committee decision.

The Act currently gives the Premier a role in the appointment of the conflict-of-interest commissioner by submitting the recommendation of a majority of the special committee to the House. The Committee's recommendation would remove the Premier's role and reduce the degree of partisanship influencing the appointment process.

However, while all other appointments require only a straight majority vote in the House, the Committee recommends that the two-thirds majority requirement be retained for the selection of the conflict-of-interest commissioner due to the special interest Members of the Legislative Assembly have in the appointment.

Term of the conflict-of-interest commissioner

The Committee recommends, in order to maintain consistency with other officers of the Legislature, that the conflict-of-interest commissioner's appointment be limited to one term of six years.

Compensation of the conflict-of-interest commissioner

The Committee recommends that the Act be amended to establish the salary of the conflict-of-interest commissioner at one-half the level of other officers of the Legislature.

Presently, the cabinet is responsible for setting the level of compensation the commissioner receives. Establishing a salary level in the *Members' Conflict of Interest Act* would enhance the commissioner's independence. The present procedure for establishing the commissioner's salary may appear to compromise the autonomy of the office.

The Committee's rationale for recommending remuneration at one-half the level of other officers of the Legislature is that the conflict-of-interest commissioner is a half-time position, while the other officers of the Legislature are full-time appointments.

Pensions for conflict-of-interest commissioners

The Committee recommends that a pension provision for the conflict-of-interest commissioner not be added to the *Members' Conflict of Interest Act*.

The Committee also discussed the question of recommending an amendment to provide a pension plan for the conflict-of-interest commissioner. It was first suggested that the commissioner's eligibility for pension should be included in the Act. After some discussion, the Committee agreed that the silence of the Act on the commissioner's pension allows for flexibility in that appointees can negotiate the terms of their pensions upon accepting the position of conflict-of-interest commissioner. It was also noted that the flexibility provided by the current silence of the Act is appropriate, given the fact that appointees to such a senior position would likely have substantial pensions from their previous careers.

Retention of documents by the conflict-of-interest commissioner

The Committee recommends that the office of the conflict-of-interest commissioner be empowered to dispose of documents relating to members after a period of seven years following the end of a commissioner's term of office.

The definition of "private interest"

The Committee recommends that the *Members' Conflict of Interest Act* retain the present negative definition of "private interest" rather than being amended to include a positive definition.

It was agreed that the negative definition, supplemented by the growing body of rulings by commissioners, provides enough clarity to the definition in terms of what is and what is not covered by the term "private interest".

Family disclosure obligations

It was recommended that the disclosure requirement of the *Members' Conflict of Interest Act* could be made more effective by changing the disclosure forms to specify a minimum disclosure level, such as \$1000.

The Act currently requires Members of the Legislative Assembly to disclose "the nature of the assets, liabilities and financial interests of the member, the member's spouse and minor children, and private corporations controlled by any of them." Members reported having to disclose even negligible sources of income, such as the paper routes of their minor children. Members agreed that this requirement, without any *de minimis* provision, achieves no constructive public policy objective.

Additional observation

The Committee discussed one additional matter of concern that did not result in any recommendation to amend the *Members' Conflict of Interest Act*.

Spousal disclosure obligations

Several committee members expressed their concern that the requirement for MLAs to disclose their spouses' sources of income may be a violation of spouses' personal privacy rights. It was considered that, as spousal partnerships become more equal and their financial relationships more independent, and further, as legislators move towards expanding the definition of spouse, this issue will probably assume greater importance.

Members conceded that the requirement for spousal disclosure may not be particularly effective in safeguarding the public interest. For example, an individual wanting to guard assets against disclosure would likely choose a more sophisticated method than transferring them to his or her spouse. It was also suggested that the spousal disclosure requirement might have the detrimental effect of discouraging some competent individuals from seeking office.

However, Committee members also agreed that to eliminate the spousal disclosure requirement at this stage might damage the public's perception of members. The Committee also observed that a certain forfeiture of privacy is one of the conditions of public life that individuals, spouses and families must anticipate; one that families must discuss at length before a family member decides to enter public life.

The possibility of confidential spousal disclosure was considered but discarded. It was agreed that a confidential disclosure would eliminate the public's ability to investigate possible conflicts of interest regarding members' spouses, thereby nullifying the purpose of the disclosure.

In the end, the Committee agreed that the benefits of spousal disclosure outweigh the potential costs.



Appendices

Appendix I – List of Written Submissions

J. T. Allen	British Columbia Association of Optometrists	pr-sub-018
Arthur Broomhall		pr-sub-022
S. E. Clarke		pr-sub-009
Herb Friesen		pr-sub-019
Herb Friesen		pr-sub-005
Wilkinson Harry		pr-sub-001
J. Henderson		pr-sub-012
Rose Henry		pr-sub-021
David Irwin		pr-sub-008
Charles Keast		pr-sub-003
Gerry Kristianson		pr-sub-007
Ryan Larson		pr-sub-002
Donna Launay		pr-sub-020
Julian Lawrence		pr-sub-010
Joan MacLatchy		pr-sub-025
Luis Martin		pr-sub-029
Dulcie McCallum		pr-sub-027
J. B. McRoberts	Board of Examiners in Optometry	pr-sub-017
Theodore Morse	B.C. College of Optics	pr-sub-004
Sharon Oddie Brown		pr-sub-016
Hon. H. A. D. Oliver	Conflict of Interest Commissioner	pr-sub-034
Karen Potter	Councilor, District of Mission	pr-sub-033
John Ranta	UBCM	pr-sub-014
L. Rauh		pr-sub-031
Kim Richards		pr-sub-023

Tony Roy		pr-sub-032
Tim Smith		pr-sub-026
Janice Smith		pr-sub-013
Frank Stromotich		pr-sub-011
Gus Ummenhofer		pr-sub-024
Harry Vogt		pr-sub-015
T.C.L. Walwyn		pr-sub-006
T. Edward Whittick	South Oak Bay Residents Association	pr-sub-030

Appendix II – The Members' Conflict of Interest Act

[RSBC 1990] CHAPTER 54

Definitions

1 In this Act:

"child" includes a person to whom a member has demonstrated a settled intention to treat as a child of his or her family;

"commissioner" means the person appointed under section 14;

"member" means a member of the Legislative Assembly or of the executive council, or both;

"private corporation" means a "private issuer" as defined in the Securities Act;

"private interest" does not include an interest arising from the exercise of an official power or the performance of an official duty or function that

- (a) applies to the general public,
- (b) affects a member as one of a broad class of electors, or
- (c) concerns the remuneration and benefits of a member or an officer or employee of the Legislative Assembly;

"spouse" means a person who is married to a member or a person who is living with a member as husband and wife but does not include a husband or a wife who is separated and living apart from a member and who

- (a) has entered into a written agreement under which they have agreed to live apart, or
- (b) is subject to an order of the court recognizing the separation.

Conflict of interest

- 2 (1) For the purposes of this Act, a member has a conflict of interest when the member exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that in the performance of the duty or function or in the exercise of the power there is the opportunity to further his or her private interest.
- (2) For the purposes of this Act, a member has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest.

Conflict of interest prohibition

- 3 A member must not exercise an official power or perform an official duty or function if the member has a conflict of interest or an apparent conflict of interest.

Insider information

- 4 A member must not use information that is gained in the execution of his or her office and is not available to the general public to further or seek to further the member's private interest.

Influence

- 5 A member must not use his or her office to seek to influence a decision, to be made by another person, to further the member's private interest.

Activities on behalf of constituents

- 6 This Act does not prohibit the activities in which members normally engage on behalf of constituents.

Accepting extra benefits

- 7 (1) A member must not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of his or her duties of office.
- (2) Subsection (1) does not apply to a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office.
- (3) If a gift or personal benefit referred to in subsection (2) exceeds \$250 in value, or if the total value received directly or indirectly from one source in any 12 month period exceeds \$250, the member must immediately file with the commissioner a disclosure statement, in the form prescribed by the regulations, indicating
- (a) the nature of the gift or benefit,
 - (b) its source, and
 - (c) the circumstances under which it was given and accepted.

Former members of executive council and former parliamentary secretaries

- 8 (1) The Executive Council, a member of the Executive Council or an employee of a ministry other than an employee of an agency, board or commission, must not knowingly
- (a) award or approve a contract with, or grant a benefit to, a former member of the Executive Council or former

- parliamentary secretary, until 24 months have expired after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office,
- (b) award or approve a contract with, or grant a benefit to, a former member of the Executive Council or former parliamentary secretary who has, during the 24 months after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office, made representations in respect of the contract or benefit, or
 - (c) award or approve a contract with, or grant a benefit to, a person on whose behalf a former member of the Executive Council or former parliamentary secretary has, during the 24 months after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office, made representations in respect of the contract or benefit.
- (2) Subsection (1) (a) and (b) does not apply to contracts or benefits in respect of further duties in the service of the government.
 - (3) Subsection (1) does not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.
 - (4) A former member of the Executive Council or former parliamentary secretary must not, unless 24 months have expired after the date when he or she ceased to hold office,
 - (a) accept a contract or benefit that is awarded, approved or granted by the Executive Council, a member of the Executive Council or an employee of a ministry other than an employee of an agency, board or commission,
 - (b) make representations on his or her own behalf with respect to such a contract or benefit, and
 - (c) make representations on another person's behalf with respect to such a contract or benefit.
 - (5) Subsection (4) (a) and (b) does not apply to contracts or benefits in respect of further duties in the service of the government.
 - (6) Subsection (4) does not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.
 - (7) A former member of the Executive Council or a former parliamentary secretary must not make representations to the government in relation to any specific ongoing transaction or

negotiation to which the government is a party and in which the former member of the Executive Council or former parliamentary secretary was directly involved if the representation would result in the conferring of a benefit not for general application.

- (8) A person who contravenes subsection (4) or (7) commits an offence and is liable, on conviction, to a fine of not more than \$5 000.

Carrying on business

- 9 (1) A member of the Executive Council must not
- (a) engage in employment or in the practice of a profession,
 - (b) carry on a business, or
 - (c) hold an office or directorship other than in a social club, religious organization or political party
- if any of these activities are likely to conflict with the member's public duties.
- (2) A person who becomes a member of the Executive Council must comply with subsection (1) within 60 days of being appointed.
- (3) The commissioner may extend the period referred to in subsection (2) by giving the member a written notice to that effect, and may impose on the extension conditions that the commissioner considers just.
- (4) If a member of the Executive Council complies with subsection (1)
- (b) by entrusting his or her business to one or more trustees,
 - (a) the provisions of the trust must be approved by the commissioner,
 - (b) the trustees must be persons who are at arm's length with the member and approved by the commissioner,
 - (c) the trustees must not consult with the member with respect to managing the trust property, and
 - (d) the trustees must report in writing all material changes in assets, liabilities and financial interests contained in the trust to the member and the commissioner immediately after the changes have occurred.
- (5) For the purposes of this section, the management of routine personal financial interests does not constitute carrying on a business.

Procedure on conflict of interest

- 10 (1) A member who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the Legislative Assembly or the Executive Council, or a committee of either of them, must, if present at a meeting considering the matter,
- (a) disclose the general nature of the conflict of interest, and
 - (b) withdraw from the meeting without voting or participating in the consideration of the matter.
- (2) If a member has complied with subsection (1), the Clerk of the Legislative Assembly or secretary of the meeting must record
- (a) the disclosure,
 - (b) the general nature of the conflict of interest disclosed, and
 - (c) the withdrawal of the member from the meeting.
- (3) The Clerk of the Legislative Assembly or secretary of the meeting must file the information recorded under subsection (2) with the commissioner,
- (a) in the case of a meeting of the Legislative Assembly or a committee of the Legislative Assembly, as soon as practicable, and
 - (b) in the case of a meeting of the Executive Council or a committee of the Executive Council, as soon as practicable after the Executive Council's decision on the matter which has been the subject of the disclosure is made public.
- (4) The commissioner must keep all information filed under subsection (3) in a central record kept for that purpose and must
- (a) make the central record available for inspection by any person without charge during normal business hours, and
 - (b) on request by any person provide a copy of the record or portion of it on payment of a reasonable copying charge.

Performance of responsibilities by minister

- 11 (1) If, during the exercise of any official power or the performance of any official duty or function by a member of the Executive Council, a matter arises with respect to which the member has a conflict of interest or apparent conflict of interest, the member must
- (a) refrain at all times from attempting to influence the matter, and
 - (b) at any subsequent meeting of the Executive Council or a committee of the Executive Council at which the matter is considered, disclose the general nature of the private

interest and withdraw from the meeting without voting or participating in the discussion.

- (2) The Lieutenant Governor in Council may appoint a member of the Executive Council to act in the place of a member referred to in subsection (1) for any matter with respect to which the member referred to in subsection (1) has a conflict of interest or apparent conflict of interest.

Voidability of transaction or procedure

- 12 The failure of any member to comply with section 10 does not of itself invalidate
 - (a) any contract or other financial transaction, or
 - (b) any procedure undertaken by the government with respect to a contract or other financial transaction to which the failure to comply with section 10 relates, but the transaction or procedure is voidable at the instance of the government before the expiration of 2 years from the date of the decision authorizing the transaction, except as against any person who or organization that acted in good faith and without actual notice of the failure to comply with section 10.

Application for restitution

- 13 Despite anything in this Act, if any person, whether or not the person is or was a member, has realized financial gain in any transaction to which a violation of this Act relates, any other person affected by the financial gain, including the government or a government agency, may apply to the Supreme Court for an order of restitution against the person who has realized the financial gain.

Commissioner

- 14
 - (1) There must be appointed a commissioner who is an officer of the Legislative Assembly.
 - (2) On the motion of the Premier in the Legislative Assembly and on the recommendation of 2/3 of the members present, the Lieutenant Governor in Council must appoint the person so recommended to the office of commissioner.
 - (3) The commissioner holds office for a term of 5 years and may be reappointed for a further term or terms.
 - (4) The commissioner may be removed or suspended before the end of the term of office by the Lieutenant Governor in Council for cause on the recommendation of the Legislative Assembly.

- (5) The commissioner must be paid compensation as may be set by the Lieutenant Governor in Council.
- (6) If
 - (a) the commissioner is removed or suspended or the office of the commissioner becomes vacant when the Legislature is sitting but no recommendation under this Act is made by the Legislative Assembly before the end of that session, or
 - (b) the commissioner is suspended or the office of the commissioner is or becomes vacant when the Legislature is not sitting, the Lieutenant Governor in Council may appoint an acting commissioner.
- (7) The appointment of an acting commissioner under this section terminates
 - (a) on the appointment of a new commissioner under subsection (2),
 - (b) at the end of the period of suspension of the commissioner, or
 - (c) immediately after the expiry of 20 sitting days after the day on which he or she was appointed, whichever the case may be and whichever occurs first.
- (8) The commissioner may employ or retain persons that the commissioner considers necessary and may
 - (a) specify their duties and responsibilities, and
 - (b) establish their remuneration and other terms and conditions of employment, or retainer.
- (9) The Labour Relations Code and the Public Service Labour Relations Act do not apply to a person employed or retained under subsection (8).
- (10) The Lieutenant Governor in Council may order that the Pension (Public Service) Act applies to the commissioner and to any person the commissioner employs.

Annual report

- 15 The commissioner must report annually on the affairs of his or her office to the Speaker of the Legislative Assembly who must cause the report to be laid before the Legislative Assembly.

Disclosure statement

- 16 (1) Every member must, within 60 days of being elected, and after that annually, file with the commissioner a confidential disclosure statement in the form prescribed by the regulations.

- (2) The disclosure statement must contain
 - (a) a statement of the nature of the assets, liabilities and financial interests of the member, the member's spouse and minor children, and private corporations controlled by any of them, and
 - (b) any other information that is prescribed by the regulations to be contained in the disclosure statement.
- (3) After filing a disclosure statement, the member, and the member's spouse if the spouse is available, must meet with the commissioner to ensure that adequate disclosure has been made and to obtain advice from the commissioner on the member's obligations under this Act, and the commissioner may recommend the manner by which the member will comply with those obligations.
- (4) If any asset, liability or financial interest described in the disclosure statement relates to a corporation, the commissioner must ascertain whether any other corporation is an affiliate of the first named corporation, as determined under section 1 (2) to (6) of the Company Act.
- (5) If the commissioner determines that there is an affiliate of the first named corporation, he or she must
 - (a) advise the member of the fact, in writing, and
 - (b) mention the fact in the public disclosure statement prepared under section 17.
- (6) After filing a disclosure statement, the member must continue to disclose any material change in the assets, liabilities and financial interests of the member, the member's spouse and minor children and private corporations controlled by any of them by filing a statement of material change with the commissioner within 30 days of the material change.
- (7) In subsection (6), "material change" means a material change as defined in the regulations.

Public disclosure statement

- 17 (1) After meeting with the member, and with the member's spouse if the spouse is available, the commissioner must prepare a public disclosure statement containing all relevant information provided by the member, and by the member's spouse if the spouse met with the commissioner, in respect of the member, the spouse and minor children, except

- (a) the municipal address or legal description of land that is primarily for the residential or recreational use of the member or the member's spouse or minor children, and
 - (b) personal property used for transportation or for household, educational, recreational, social or aesthetic purposes.
- (2) The public disclosure statement must contain a statement of any gifts or benefits that have been disclosed to the commissioner under section 7 (3).
- (3) The commissioner must, as soon as is practicable, file the public disclosure statement with the Clerk of the Legislative Assembly who must
 - (a) make the statement available to any person for inspection without charge and during normal business hours, and
 - (b) provide a copy of the statement on payment of a reasonable copying charge.

Commissioner's opinions and recommendations

- 18 (1) A member may request, by application in writing, that the commissioner give an opinion or recommendation on any matter respecting the obligations of the member under this Act or under section 25 of the Constitution Act.
- (2) The commissioner may make such inquiries as the commissioner considers appropriate and provide the member with a written opinion and recommendations.
- (3) If the commissioner is of the opinion that a member has or may have a conflict of interest, the commissioner may, in the recommendations, specify the time by which the member must resolve the matter.
- (4) The opinion and recommendations of the commissioner are confidential, but may be released by the member or with the consent of the member in writing.
- (5) If the commissioner determines that a member has not contravened this Act, that determination is final for all purposes of the Act and any proceeding under the Act, so long as the facts presented by the member to the commissioner under subsection (1) were accurate and complete.

Commissioner's opinion on referred question

- 19 (1) A member who has reasonable and probable grounds to believe that another member is in contravention of this Act or of section 25 of the Constitution Act may, by application in writing setting

- out the grounds for the belief and the nature of the contravention alleged, request that the commissioner give an opinion respecting the compliance of the other member with the provisions of this Act.
- (2) A member of the public who has reasonable and probable grounds to believe that there has been a contravention of this Act or of section 25 of the Constitution Act may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the commissioner give an opinion respecting the alleged contravention.
 - (3) The Executive Council may request that the commissioner give an opinion on any matter respecting the compliance of a member of the Executive Council or a parliamentary secretary with the provisions of this Act or of section 25 of the Constitution Act.
 - (4) The Legislative Assembly may request that the commissioner give an opinion on any matter respecting the compliance of a member with the provisions of this Act or of section 25 of the Constitution Act.

Special assignments

- 20 At the request of the Lieutenant Governor in Council or the Legislative Assembly, the commissioner may undertake special assignments that he or she considers appropriate.

Inquiry

- 21
- (1) On receiving a request under section 19, and on giving the member concerned reasonable notice, the commissioner may conduct an inquiry.
 - (2) If the request for an opinion is made under section 19 or the commissioner undertakes a special assignment under section 20, the commissioner has the powers of a commissioner under sections 15 and 16 of the Inquiry Act.
 - (3) If the request for an opinion is made under section 19 (1), the commissioner must report his or her opinion to the Speaker of the Legislative Assembly who must cause the report to be laid before the Legislative Assembly if it is in session or, if not in session, to the Clerk of the Legislative Assembly who must send a copy of it to all Members of the Legislative Assembly.
 - (4) If it appears to the commissioner that the report may adversely affect the member, the commissioner must inform the member of the particulars and give the member the opportunity to make

representations, either orally or in writing, at the discretion of the commissioner, before the commissioner finalizes the report.

- (5) If the commissioner is of the opinion that the member making the application under section 19 (1) had no reasonable and probable grounds for making it, the commissioner may state that in his or her report, and if he or she does so, the commissioner must report the matter to the Speaker who must lay the report before the Legislative Assembly and the Legislative Assembly may, after considering the matter, hold the member in contempt of the Legislative Assembly.
- (6) If the request for an opinion is made under section 19 (3), the commissioner must report his or her opinion to the Secretary of the Executive Council.

Penalties

22 (1)

If the commissioner finds

- (a) after an inquiry under section 21 that a member has contravened section 3, 4, 5, 7, 8, 9 or 10 (1), or
- (b) that a member has refused to file a disclosure statement within the time provided by section 16 or that a member has failed to comply with a recommendation of the commissioner under section 16 (3) or 19, the commissioner may recommend, in a report that is laid before the Legislative Assembly
- (c) that the member be reprimanded,
- (d) that the member be suspended for a period specified in the report,
- (e) that the member be fined an amount not exceeding \$5 000,

or

- (f) that the member's seat be declared vacant until an election is held in the member's electoral district.
- (2) The Legislative Assembly must consider the commissioner's report and respond to it as subsection (3) provides
 - (a) within 30 days after it is laid before the Legislative Assembly, or
 - (b) within 30 days after the next session begins if the Legislative Assembly is not in session.
 - (3) The Legislative Assembly may order the imposition of the recommendation of the commissioner under subsection (1) or may reject the recommendation, but the Legislative Assembly must not

further inquire into the contravention or impose a punishment other than the one recommended by the commissioner.

Protection of commissioner

- 23 No action of any kind lies against the commissioner for anything he or she does under this Act.

Appropriation

- 24 Money required for the operation of the office of the commissioner may be paid out of the consolidated revenue fund.

Offence Act

- 25 Section 5 of the Offence Act does not apply to this Act.

Power to make regulations

- 26 Subject to the approval of the Lieutenant Governor in Council, the commissioner may make regulations prescribing any matter that is contemplated in this Act to be prescribed by regulations.